Supreme Court, U. S.
FILED
FEB 23 1976
MICHAEL RODAK, JR., CLERK

NO. 75-1210

IN THE

Supreme Court of the United States

JAMES H. QUARLES, Individually and as Trustee for the Estate of James H. Quarles, ~~E. A. HYLAND, Individually and as Trustee, and LAWYERS SURETY CORPORATION~~, *Appellants*

v.

J. C. GOODSON, also sometimes known as JACK C. GOODSON and wife, FANNIE MAE GOODSON, MRS. E. A. BIGGERS, D/B/A E. A. BIGGERS REAL ESTATE, GEORGE N. ST. CLAIR, and AMERICAN TITLE COMPANY, *Appellees*

Appeal from Order of the Supreme Court of Texas, Judgment of the 14th Court of Appeals of Texas, and Judgment of the 152nd Judicial District Court of Texas

APPEAL And APPLICATION FOR WRIT OF CERTIORARI

JAMES H. QUARLES
Post Office Box 52009
Houston, Texas 77052
Attorney for Appellant

Alpha Law Brief Co., One Main Plaza, No. 1 Main St., Houston, Texas 77002

SUBJECT INDEX

	Page
Proceedings and Statement of Reports	1
Jurisdictional Statement	2
Statement of the Case	3
Statement of Jurisdiction	6
Points of Error	6
Argument	7
Conclusion and Prayer	7
Certificate of Service	8
Appendix A—Order and Ruling of Supreme Court of Texas	9
Certificate	12
Appendix B—Opinion of the Court of Civil Appeals for the Fourteenth Judicial District	13
Certificate	15
Appendix C—Judgment of the Court of Civil Appeals for the Fourteenth Judicial District	16
Certificate	17
Appendix D—Docket Sheet of the Court of Civil Appeals for the Fourteenth Judicial District	18
Appendix E—Docket Sheet of the Court of Civil Appeals for the Fourteenth Judicial District	20
Certificate	21
Appendix F—Final Judgment of the District Court of Harris County, Texas for the 152nd Judicial District	22
Appendix G—Request to Clerk of the Court of Civil Appeals for the Fourteenth Judicial District to Prepare and Forward Record	28

LIST OF AUTHORITIES

CASES	Page
United States of America v. Bernard E. Meyer, 462 F.2d 827, 346 Fed. Supp. 973	3

UNITED STATES CONSTITUTION	
Article III, Section II	2, 3
Amendments V and XIV	3, 6
Amendment VII	6, 7

UNITED STATUTES STATUTES	
28 U.S.C.A., Section 2101	2, 3
28 U.S.C.A., Section 2104	2, 3
28 U.S.C.A., Section 1257	2, 3, 6

NO. _____

IN THE

Supreme Court of the United States

JAMES H. QUARLES, Individually and as Trustee for the Estate of James H. Quarles, E. A. HYLAND, Individually and as Trustee, and LAWYERS SURETY CORPORATION, *Appellants*

v.

J. C. GOODSON, also sometimes known as JACK C. GOODSON and wife, FANNIE MAE GOODSON, MRS. E. A. BIGGERS, D/B/A E. A. BIGGERS REAL ESTATE, GEORGE N. ST. CLAIR, and AMERICAN TITLE COMPANY, *Appellees*

Appeal from Order of the Supreme Court of Texas, Judgment of the 14th Court of Appeals of Texas, and Judgment of the 152nd Judicial District Court of Texas

APPEAL And APPLICATION FOR WRIT OF CERTIORARI

PROCEEDINGS AND STATEMENT OF REPORTS

To The Honorable United States Supreme Court:

On the 15th day of October, 1974 the Judge of the 152nd Judicial Court of Texas withdrew case No. 865,598 from the jury and rendered judgment for the Appellees to which action Appellants objected and made a bill of exception. On the 12th day of November, 1974, Judge

John Snell, Jr. signed and entered judgment against the Appellants to which the Appellants filed his bill of exceptions to the judgment rendered by the court. Appeal was perfected to the Court of Civil Appeals for the 14th District of Texas, Case No. 1164. A decision was reached and judgment and opinion was filed on the 25th day of June, 1975. Again Appellants perfected appeal, this time to the Supreme Court of Texas Case No. B5489, the highest court in the state of Texas being the court of last resort in the state for the Appellants. On the 1st day of October, 1975, Application for Writ of Error was refused. Motion for rehearing was filed by Appellants and was over-ruled by the Court on the 29th day of October, 1975. On the 10th day of October, 1975, application to stay mandate and notice of appeal to the United States Supreme Court with the 14th Court of Civil Appeals. Appended hereto are the opinions delivered upon rendering of judgments as required by Supreme Court Rule 15A.

JURISDICTIONAL STATEMENT

The Supreme Court of the United States has jurisdiction under 28 U.S.C.A. 2101, paragraph C; 28 U.S.C.A. 2104; 28 U.S.C.A. 1257; and Article III, Sec. II of the United States Constitution, it being a well settled rule that the U.S. Supreme Court has jurisdiction over constitutional question.

The case is one of contract between Appellant Quarles and Appellees Goodsons and also Quarles and Hyland.

Appellants are seeking a review by the Supreme Court of the United States on order of the Supreme Court of Texas rendered on the 1st day of October, 1975 and order over-ruling Motion for Rehearing rendered on the 29th day of October, 1975, the judgment of the 14th Court

of Civil Appeals of Texas rendered on the 25th day of June, 1975, and the final judgment of the 152nd District Court of Texas entered on the 12th day of November, 1974.

Application to stay mandate coupled with notice of appeal was filed at the directive of Garson R. Jackson, Clerk of the Supreme Court of Texas in the 14th Court of Civil Appeals of Texas on the ~~10th~~ 31st day of October, 1975.

Statutory provisions conferring on the Court jurisdiction of this appeal is 28 U.S.C.A. 2101, 28 U.S.C.A. 2104, and 28 U.S.C.A. 1257 as well as the United States Constitution Article III, Sec. II and Amendments V and XIV of the United States Constitution and sustained by *United States of America v. Bernard E. Meyer,* 462 F.2d 827, 346 Fed. Supp. 973.

Appellants contend that:

a. They were denied a fair and impartial trial.

b. They were denied Due Process.

c. They were denied a jury trial.

which Appellants submit to the Honorable United States Supreme Court and its panel of justices for its opinion and ruling.

STATEMENT OF THE CASE

The case is one of contract between Appellant Quarles and Appellees J. C. Goodson and wife, Fannie Mae Goodson and also between Appellant Quarles and Hyland. On the 10th day of April 1970 Appellant Quarles along with one Velma Ray Pendleton as Trustees for the Estate of James H. Quarles, entered into a written contract with Mrs. E. A. Biggers, D/B/A E. A. Biggers, Real Estate

as agent for and in behalf of the Appellees Goodson, depositing with said agent Five Hundred Dollars earnest money (See transcript pages 54 and 55) said contract was approved and executed by the Appellees Goodsons on the 23rd day of April, 1970 and thereafter placed of record in the office of the County Clerk by Appellant Quarles. Appellees Goodsons failed or refused to deliver a General Warranty Deed as contracted because of a title difficulty; where as, Appellant Quarles entered into a second agreement with agent Biggers whereby Appellant Quarles would purchase the tract of land owned by the Goodsons for a price of Twenty-one Thousand Dollars, instead of the Eighteen Thousand Dollars cash as first contracted to between Quarles and Pendleton as Trustees and Appellees Goodsons. There was a consideration of Five Thousand Dollars cash to be paid by Velma Ray Pendleton in return for a concurrent lien with the Goodsons on the tract of land being purchased by Appellants; as further consideration Appellant Quarles as Trustee delivered to agent Biggers promissory notes in the aggregate sum of Twenty-one Thousand Dollars bearing interest of 8% to secure the Goodsons and Pendleton payment, said notes were secured with the land to be purchased by Appellant Quarles; said notes were payable annually at Twelve Hundred Dollars plus all accumulated interest. Still no deed was ever presented to Appellant Quarles nor the promissory notes returned. Agent Biggers accepted an additional contract from George N. St. Clair on the purchase of the same tract of land with full knowledge by St. Clair of Appellant's rights to the land. Appellee St. Clair proceeded to bulldoze all trees from the soil. Shortly afterwards suit was commenced by Appellees Goodsons against Appellant Quarles and approximately three weeks before trial Appellant Hyland was made a

defendant by Appellees Goodsons. Suit was to remove cloud from the title of the land. Appellant responded with a cross-action for specific performance and damages. Appellant Quarles conveyed his prospective title to the land to E. A. Hyland (See transcript, pages 53 and 54) upon certain conditions. Appellee American Title Company fraudulently secured a release from Velma Ray Pendleton (see transcript, pages 56, 57, and 58) on behalf of J. C. Goodson and wife, Fannie Mae Goodson, Mrs. E. A. Biggers, D/B/A E. A. Biggers Real Estate, and George N. St. Clair.

On March 6, 1974 Appellant Quarles paid a jury fee and demanded a trial by jury and on the 14th day of October, 1974 announced ready for trial. The docket clerk was requested by Judge John Snell, Jr. to assign the case to his, the 152nd Judicial District Court of Texas. A jury was empaneled to hear the case, but was denied the obligation to render its decision by Judge Snell, who had shown by his actions and remarks to Appellants Quarles and Hyland to be prejudiced and biased. Judge Snell refused to permit Appellant Hyland any opportunity to redress and further denied him the right to sit at the counsel table during the trial. A Statement of Facts was denied Appellant Quarles which would have substantiated the charge of prejudice by Judge Snell against Appellants and his tendency without justification to do bidding as requested by the Appellees' counsel.

During the trial of the case in the 152nd District Court, the Appellee American Title Company took no part therein nor did they submit any evidence whatsoever, pro or con, and furthermore never even appeared in the case during the trial, but was entered in the judgment rendered by Judge John Snell.

Appellants do not intend to burden this Honorable Court with scurrilous remarks about the fitness of a Judge to preside over this or any other case, but Appellants do question Judge John Snell, Jr.'s ability to judge this case in his prejudiced state of mind against these Appellants. He continuously refused to make reply to demand for finding of facts, and to therefore render due process, guaranteed by the Fifth and Fourteen amendments to the Constitution of the United States of America. Appellants further question the action of the 14th Court of Civil Appeals and also the Supreme Court of Texas to insert in their judgments and orders the liability of Lawyers Surety Corporation when no question was ever raised by Appellants or Appellees as to said liability, it being the duty of the appellate courts to interpret the law and not to make it.

STATEMENT OF JURISDICTION

The United States Supreme Court has jurisdiction of this case under 28 U.S.C.A. 1257.

POINTS OF ERROR

a. **The denial of a fair and impartial trial to the appellants as guaranteed by the Fifth and Fourteenth amendments and other Articles of the United States Constitution.**

b. **The denial to Appellants due process as guaranteed by the Fifth and Fourteenth amendments and various other Articles of the United States Constitution.**

c. **The denial to Appellants the right to have their case decided by a jury and the right to their property as guaranteed by the Seventh amendment of the Constitution of the United States.**

ARGUMENT

Appellants entered into a contract to purchase a tract of land supposedly owned by J. C. Goodson and wife, Fannie Mae Goodson, in good faith and placed with their agent Five Hundred Dollars cash as part payment for the tract of land (See transcript pages 54 and 55) but because of the Titie difficulty as to the restrictions set in the deed to one J. C. Goodson, a second agreement was entered into with the Goodsons to purchase the land and promissory notes were delivered to their agent, Mrs. E. A. Biggers as agreed (See transcript page 73). No deed was ever furnished Appellants. Instead, the Appellees' agent entered into another contract (See transcript page 74) and then used the Texas Courts to deprive the Appellants of rights guaranteed by the Seventh Amendment of the United States Constitution and other rights set out by the constitution.

The facts are clearly set out by the Appellants that they were denied a fair and impartial trial, due process, and a jury decision or trial as guaranteed by the Fifth and Fourteenth amendments of the Constitution of the United States.

CONCLUSION

The authorities and cases in this brief substantiate the claims herein set out and the 152nd District Court of Texas, the 14th Court of Civil Appeals, and the Supreme Court of Texas are in error and for the reasons stated the judgments should be reversed in every respect and judgment rendered for the Appellants. Appellants would also ask for such other and further relief to Appellants

are entitled and for all of which Appellants respectfully pray.

Respectfully submitted,

By: _____

JAMES H. QUARLES, Trustee
Post Office Box 52009
Houston, Texas 77052
Attorney for Appellants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed by United States mail, postage prepaid, addressed to the following individuals at the address following each of their respective names:

Mr. T. Turner Pope
Kamp, Laswell & Pope
2935 Entex Building
Houston, Texas 77002

Mr. John T. McKeller
2626 Westheimer
Houston, Texas 77006

Mr. Sim Lake
Fulbright and Jaworski
Bank of the Southwest Bldg.
Houston, Texas 77002

Mr. David N. Gray
1453 Esperson Bldg.
Houston, Texas 77002

on this _____ day of February, 1976.

_____

JAMES H. QUARLES, Trustee
Attorney for Appellants

APPENDIX A

IN THE
SUPREME COURT OF TEXAS

_____

October 1, 1975

No. B-5489

JAMES H. QUARLES ET AL.

v.

J. C. GOODSON ET AL.

From HARRIS County,
FOURTEENTH District.

Application of petitioners for writ of error to the Court of Civil Appeals for the Fourteenth Supreme Judicial District having been duly considered, and the Court having determined that the application presents no error requiring reversal of the judgment of the Court of Civil Appeals, it is ordered that said application be, and hereby is, refused.

It is further ordered that applicants, James H. Quarles et al., and their surety, Lawyers Surety Corporation, pay all costs incurred on this application.

_____

October 29, 1975

No. B-5489

JAMES H. QUARLES ET AL.

v.

J. C. GOODSON ET AL.

From HARRIS County,

FOURTEENTH District.

Petitioners' motion for rehearing of application for writ of error having been duly considered, it is ordered that said motion be, and hereby is, overruled.

I, GARSON R. JACKSON, Clerk of the Supreme Court of Texas, do hereby certify that the above and foregoing is a true and correct copy of the orders of the Supreme Court of Texas in the case numbered and styled as above, as the same appears of record in the minutes of said Court under the dates shown.

WITNESS my hand and seal of the Supreme Court of Texas, at the City of Austin, this, the 9th day of November, 1975.

GARSON R. JACKSON, Clerk

By /s/ MARY M. WAKEFIELD
Deputy

No. B-5489

IN THE
SUPREME COURT OF TEXAS

JAMES H. QUARLES ET AL.

v.

J. C. GOODSON ET AL.

Certified copy of Order of the Supreme Court of Texas.
(Application for Writ of Error REFUSED—N.R.E.)

THE STATE OF TEXAS §
COUNTY OF HARRIS §

I, THELMA MUELLER, Clerk of the Court of Civil Appeals, Fourteenth Supreme Judicial District of Texas, at Houston, do hereby certify that the preceding 2 pages contain a true and correct copy of order from Supreme Court in Cause No. 1164, JAMES H. QUARLES, ET AL, Appellants v. J. C. GOODSON, ET AL, Appellees from Harris County, and now on file in my office.

TO CERTIFY WHICH, I hereunto set my hand and affix the Seal of Said Court, at Houston, this the 23rd day of December, A.D. 1975.

/s/ THELMA MUELLER
Clerk

By_____
Deputy

APPENDIX B

IN THE
COURT OF CIVIL APPEALS
For The Fourteenth Judicial District

Affirmed, and Opinion filed June 25, 1975

NO. 1164

JAMES H. QUARLES, ET AL, Appellants
v.
J. C. GOODSON, ET AL, Appellees

Appeal from 152nd District Court of Harris County

James H. Quarles, individually and as trustee for the Estate of James H. Quarles (appellants), perfected appeal after a final judgment against him, in both capacities, in a trespass to try title case. Appellants, defendants and cross-plaintiffs below, were also specifically denied relief sought by way of cross-actions. A transcript was filed, but there is no statement of facts before us. Neither have any briefs been filed. American Title Company, one of the appellees, has filed a motion to dismiss the appeal under TEX. R. CIV. P. 415. J. C. Goodson and his wife (appellees) have filed a motion to affirm the judgment of the trial court also under TEX. R. CIV. P. 415. This latter motion was joined in by the remaining appellees, Mrs. E. A. Biggers and George St. Clair.

Under TEX. R. CIV. P. 415, we have the authority to dismiss the appeal for want of prosecution where good

cause is not shown for failure to file a brief. Lueck v. Carter, 466 S.W.2d 90 (Tex. Civ. App.—Fort Worth 1971, no writ). Rule 415 also gives this Court the discretion to decline to dismiss the appeal and to "give such direction to the cause as it may deem proper."

It has been long held that if the ends of justice would be better served and inspection of the record discloses no fundamental error, then this Court should affirm the judgment. Haynes v. J. M. Radford Grocery Co., 14 S.W.2d 811 (Tex. Comm'n App. 1929, opinion adopted); Davidson v. Butler, 519 S.W.2d 511 (Tex. Civ. App.—Fort Worth 1975, no writ); Turner v. State, 508 S.W.2d 861 (Tex. Civ. App.—Fort Worth 1974, no writ); *see* Hill v. McDaniel, 129 S.W.2d 321 (Tex. Civ. App.—Eastland 1939, writ ref'd).

Examination of the record does not disclose any fundamental error. We are of the belief that the interests of justice would be better served by affirmance rather than dismissal of the appeal.

We therefore, overrule the motion to dismiss the appeal and instead grant the motion to affirm the trial court judgment. All costs of the appeal are taxed against the appellants.

Affirmed.

/s/ CURTISS BROWN
Curtiss Brown
Associate Justice

No publication—Rule 452.

THE STATE OF TEXAS §
COUNTY OF HARRIS §

I, THELMA MUELLER, Clerk of the Court of Civil Appeals, Fourteenth Supreme Judicial District of Texas, at Houston, do hereby certify that the preceding 2 pages contain a true and correct copy of Court's Opinion rendered June 25, 1975, in Cause No. 1164, JAMES H. QUARLES, ET AL, Appellants v. J. C. GOODSON, ET AL, Appellees from Harris County, and now on file in my office.

TO CERTIFY WHICH, I hereunto set my hand and affix the Seal of Said Court, at Houston, this the 21st day of January, A.D. 1976.

/s/ THELMA MUELLER
Clerk

By _____
Deputy

APPENDIX C

IN THE
COURT OF CIVIL APPEALS
For The Fourteenth Judicial District

JUDGMENT

NO. 1164

JAMES H. QUARLES, ET AL
v.
J. C. GOODSON, ET AL

"On this day came on to be heard appellee's (American Title Company) motion to dismiss this appeal pursuant to Rule 415 Texas Rules of Civil Procedure; appellees' (J. C. Goodson and wife, Fannie Mae Goodson) motion to affirm pursuant to Rule 415 Texas Rules of Civil Procedure; appellee's (George St. Clair) supporting motion pursuant to Rule 415, and appellee's (Mrs. E. A. Biggers) motion pursuant to Rule 415, and it appearing to the Court that the transcript in this cause was filed February 21, 1975; that appellants' third motion to extend time to file statement of facts was denied by this Court on May 21, 1975; that appellant has not timely filed a brief nor a motion for an extension of time in which to file a brief, it is therefore considered, adjudged and ordered that the motion to dismiss the appeal be overruled and the judgment of the trial court be and the same hereby is affirmed in all things. It is further ordered that the appellants, James H. Quarles, et al, and their surety, Lawyers Surety Corporation, pay all costs incurred by reason of this appeal. It is further ordered that this decision be certified below for observance."

THE STATE OF TEXAS §
COUNTY OF HARRIS §

I, THELMA MUELLER, Clerk of the Court of Civil Appeals, Fourteenth Supreme Judicial District of Texas, at Houston, do hereby certify that the preceding 1 page contain a true and correct copy of judgment rendered June 25, 1975, in Cause No. 1164, JAMES H. QUARLES, ET AL, Appellants v. J. C. GOODSON, ET AL, Appellees, from Harris County, and now on file in my office.

TO CERTIFY WHICH, I hereunto set my hand and affix the Seal of Said Court, at Houston, this the 21st day of January, A.D. 1976.

/s/ THELMA MUELLER
Clerk

By _____

APPENDIX D

IN THE
COURT OF CIVIL APPEALS
For The Fourteenth Judicial District

DOCKET SHEET

BE IT REMEMBERED:

THAT at the term of the Honorable Court of Civil Appeals for the Fourteenth Supreme Judicial District of the State of Texas, begun and holden at Houston on the 1st Monday of October, A.D., 1974, present BERT H. TUNKS, Chief Justice, and Associate Justices, Edward D. Coulson and Curtiss Brown.

In the cause

NO. 1164

JAMES H. QUARLES, ET AL., Appellants

v.

J. C. GOODSON, ET AL., Appellees

From Harris County
Trial Court No. 865,598
Opinion by Curtiss Brown, AJ

the following orders were entered:

On March 12, 1975:

"It is ordered that appellant's motion to extend time to file statement of facts herein be granted; time is extended to and including April 28, 1975."

"Appellant's motion to order original depositions filed in court below given by James H. Quarles to be filed in this Court is denied."

On May 7, 1975:

"It is ordered that appellants' second motion to extend time to file statement of facts be granted; time is extended to and including May 13, 1975."

On May 21, 1975:

"It is ordered that appellants' third motion to extend time to file statement of facts and application for writ of mandamus be denied."

On June 11, 1975:

"It is ordered that appellants' motion for rehearing on appellants' third motion to extend time to file statement of facts be overruled."

On July 16, 1975:

"It is ordered that appellants' motion for rehearing be overruled."

APPENDIX E

IN THE
COURT OF CIVIL APPEALS
For The Fourteenth Judicial District

DOCKET SHEET

BE IT REMEMBERED:

THAT at the term of the Honorable Court of Civil Appeals for the Fourteenth Supreme Judicial District of the State of Texas, begun and holden at Houston on the 1st Monday of October, A.D., 1975, present BERT H. TUNKS, Chief Justice, and Associate Justices, Edward D. Coulson and Curtiss Brown.

In the cause

No. 1164

JAMES H. QUARLES, ET AL., Appellants

v.

J. C. GOODSON, ET AL., Appellees

From Harris County
Trial Court No. 865,598
Opinion by Curtiss Brown, AJ

the following order was entered on December 10, 1975:

"It is ordered that appellants' motion to stay issuance of mandate be denied."

I, THELMA MUELLER, Clerk of the Court of Civil Appeals for the Fourteenth Supreme Judicial District of Texas, at the City of Houston, hereby certify that the foregoing is a true copy of order entered herein by this Court in the above entitled and numbered cause as appears of record in Minute Book 2, Page 63.

IN WITNESS WHEREOF, I hereunto set my hand and affix the seal of said Court at Houston this 21st day of January A.D., 1976.

/s/ THELMA MUELLER
Clerk

I, THELMA MUELLER, Clerk of the Court of Civil Appeals for the Fourteenth Supreme Judicial District of Texas, at the City of Houston, hereby certify that the foregoing is a true copy of all orders entered herein by this Court in the above entitled and numbered cause as appears of record in Minute Books 1 & 2, Page 631, 4, 9, 15, 27.

IN WITNESS WHEREOF, I hereunto set my hand and affix the seal of said Court at Houston this 21st day of January A.D., 1976.

/s/ THELMA MUELLER
Clerk

APPENDIX F

NO. 865,598

IN THE
DISTRICT COURT OF HARRIS COUNTY, TEXAS
152ND JUDICIAL DISTRICT

J. C. GOODSON, ALSO SOMETIMES KNOWN AS JACK C. GOODSON AND WIFE, FANNIE MAE GOODSON

v.

JAMES H. QUARLES, TRUSTEE FOR THE ESTATE OF JAMES H. QUARLES

FINAL JUDGMENT

BE IT REMEMBERED that on October 14, 1974, the above entitled and numbered case was heard; and thereupon came the plaintiffs and cross-defendants, J. C. Goodson, also sometimes known as Jack C. Goodson, and wife, Fannie Mae Goodson, by and through their attorneys of record; and came defendant and cross-plaintiff, James H. Quarles, individually and as trustee for the Estate of James H. Quarles, pro se; and came defendant, E. A. Hyland, individually and as trustee, pro se; and came cross-defendant, Mrs. E. A. Biggers, by and through her attorney of record; and came cross-defendant, George N. St. Clair, by and through his attorneys of record; and that same day a jury of twelve good and lawful people were elected, impaneled, tested, and sworn; and the parties proceeded to state their positions and to adduce their evidence until all parties announced in open court that they rested. Whereupon, after all parties had rested, plaintiffs and cross-defendants, J. C. Goodson and Fannie Mae Goodson, moved for an instructed verdict, or in the

alternative a directed verdict; and cross-defendant, Mrs. E. A. Biggers, moved for an instructed verdict, or in the alternative a directed verdict; and cross-defendant, George N. St. Clair, moved for an instructed verdict, or in the alternative a directed verdict; and defendant and cross-plaintiff, James H. Quarles, individually and as trustee for the Estate of James H. Quarles, moved for an instructed verdict; and the court, having considered the evidence, the motions, and the arguments of counsel, withdrew the case from the jury and ordered that plaintiffs, J.C. Goodson and wife, Fannie Mae Goodson, do have and recover the relief prayed for in their Second Amended Original Petition against defendants, James H. Quarles, individually and acting as trustee for the Estate of James H. Quarles and E. A. Hyland, individually and as trustee, and further ordered that defendant and cross-plaintiff, James H. Quarles individually and as trustee for the Estate of James H. Quarles, do have and recover nothing of and from cross-defendants, J. C. Goodson, also sometimes known as Jack C. Goodson, and wife Fannie Mae Goodson, Mrs. E. A. Biggers, and George N. St. Clair; and the court having determined that an interlocutory judgment has been entered heretofore on October 10, 1974, in favor of American Title Company and that such judgment should be made final and incorporated herein; and the court having determined that an interlocutory order has been entered heretofore on April 15, 1974, awarding attorney's fees to plaintiffs, J. C. Goodson and Fannie Mae Goodson, and that such order should be made final and incorporated herein; it is, therefore

ORDERED, ADJUDGED AND DECREED:

(1) That plaintiffs, J. C. Goodson, also sometimes known as Jack C. Goodson, and wife, Fannie Mae Good-

son, do have and recover of and from James H. Quarles, individually and as trustee for the Estate of James H. Quarles and E. A. Hyland, individually and as trustee, the title to and possession of the following described land and premises located and being situated in Harris County, Texas, to-wit:

> Lot Eight (8) in Block Three (3) of OLD RIVER TERRACE, SECTION TWO (2), a subdivision in Channelview, Harris County, Texas, according to the map thereof recorded in Volume 14, page 21 of the map records of Harris County, Texas;

(2) That the contract dated April 10, 1970, between Jack C. Goodson and Fannie Mae Goodson, as sellers, and Velma Ray Pendleton, trustee, and James H. Quarles, trustee, as purchasers, recorded in Volume 8067, pages 159 and 160 of the Deed Records of Harris County, Texas, is and the same is hereby declared to be in all things null and void and of no force and effect and that said contract be and the same is hereby cancelled and terminated and that neither defendant, James H. Quarles, individually or as trustee of the Estate of James H. Quarles, nor defendant E. A. Hyland, individually or as trustee, nor the heirs, administrators, successors and assigns of James H. Quarles, individually or as trustee of the Estate of James H. Quarles or E. A. Hyland individually or as trustee, has any right, title or interest of any kind or nature in or to the following described land and premises located and being situated in Harris County, Texas, to-wit:

> Lot Eight (8) in Block Three (3) of OLD RIVER TERRACE, SECTION TWO (2), a subdivision in Channelview, Harris County, Texas, according to the map thereof recorded in Volume 14, page 21 of the map records of Harris County, Texas;

(3) That plaintiffs, J. C. Goodson, also sometimes known as Jack C. Goodson, and wife, Fannie Mae Goodson, do have and recover of and from defendant, James H. Quarles, individually and as trustee of the Estate of James H. Quarles, the amount of Fifty and No/100 Dollars ($50.00) to reimburse them for reasonable costs and attorneys' fees incurred in presenting their Motion to Compel Answers to Written Interrogatories or in the Alternative Motion to Enter Judgment by Default, together with interest at the rate of six percent (6%) per annum on all of said amount from the date hereof until paid;

(4) That defendants and cross-plaintiffs, James H. Quarles, individually and as trustee of the Estate of Quarles, and E. A. Hyland, individually and as trustee, do have and recover nothing of and from cross-defendants, J. C. Goodson, also sometimes known as Jack C. Goodson, and wife, Fannie Mae Goodson, Mrs. E. A. Biggers, and George N. St. Clair, that all relief prayed for by James H. Quarles, individually and as trustee of the Estate of James H. Quarles, and E. A. Hyland, individually and as trustee, against cross-defendants, J. C. Goodson, also sometimes known as Jack C. Goodson, and wife, Fannie Mae Goodson, Mrs. E. A. Biggers, and George N. St. Clair, be and the same is hereby denied;

(5) That American Title Company do have and recover of and from James H. Quarles, individually and as trustee for the Estate of James H. Quarles, the sum of One Thousand Five Hundred and No/100 Dollars ($1,500.00), with interest thereon at the rate of six percent (6%) per annum from date hereof until paid;

(6) That James H. Quarles, individually and as trustee for the Estate of James H. Quarles, shall take nothing against American Title Company by way of any cause of

action or allegation on file herein and set forth in Defendant's and Cross-Plaintiffs' Answer to Plaintiff's Second Amended Original Petition, and American Title Company is hereby dismissed from this cause with prejudice to and against James H. Quarles individually and as trustee for the Estate of James H. Quarles, to file in this or in any other proceeding any cause of action or allegation which is set forth and alleged in his pleadings designated "Defendants' and Cross-Plaintiffs' Answer to Plaintiff's Second Amended Original Petition";

(7) That all costs of court in connection with the above styled and numbered cause are adjudged and taxed against James H. Quarles, individually and as trustee of the Estate of James H. Quarles, and E. A. Hyland, individually and as trustee.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all other and further relief prayed for by any of the parties hereto which is not specifically granted herein, be and the same is hereby denied.

For all of which shall issue execution and all other appropriate writs of this Court in enforcement of this judgment.

To which actions and rulings of the court James H. Quarles, individually and as trustee of the Estate of James H. Quarles, did in open court duly accept.

Entered this ____ day of _____, 1974.

JOHN SNELL, JR.
Presiding Judge

APPROVED AS TO FORM:

FULBRIGHT & CROOKER

By: /s/ SIM LAKE
Sim Lake
Bank of the Southwest Building
Houston, Texas 77002

KAMP, LASWELL & POPE

By: /s/ T. TURNER POPE
T. Turner Pope
1200 Milam
Houston, Texas 77002

/s/ JOHN T. McKELLER
John T. McKeller
2626 Westheimer
Houston, Texas

MINTER & MAHON

By: /s/ DAVID N. GRAY
David N. Gray
1453 Mellie Esperson Bldg.
Houston, Texas 77002

APPENDIX G

REQUEST TO CLERK OF THE COURT OF CIVIL APPEALS FOR THE FOURTEENTH JUDICIAL DISTRICT TO PREPARE AND FORWARD RECORD

January 21, 1976

Mrs. Thelma Mueller
Clerk of the Court of Civil Appeals
for the Fourteenth District of Texas

Mrs Mueller this is a request for you to prepare a certified copy of each opinion and order or judgment in your cause number 1164, Supreme Court number B-5489 and 152nd District Court number 865,598.

This is also a request that you forward the complete record of all proceedings in the aforementioned cause numbers styled Goodson v. Quarles or vice versa, to be used on the appeal to the United States Supreme Court.

All records are to be sent to the Clerk of the United States Supreme Court for filing.

Thanking you,

/s/ JAMES H. QUARLES

Supreme Court, U. S.
FILED
MAR 8 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-1210

JAMES H. QUARLES, ET AL,

Appellants,

v.

J. C. GOODSON, ET AL,

Appellees.

ON APPEAL FROM THE
COURT OF CIVIL APPEALS OF TEXAS
FOURTEENTH SUPREME JUDICIAL DISTRICT

MOTION OF APPELLEES J. C. GOODSON AND WIFE, FANNIE MAE GOODSON, TO DISMISS OR AFFIRM

SIMEON TIMOTHY LAKE III
Counsel for Appellees

J. C. GOODSON AND
FANNIE MAE GOODSON

Of Counsel:

FULBRIGHT & JAWORSKI
Bank of the Southwest Bldg.
Houston, Texas 77002
224-7070

FIDELITY PRINTING COMPANY, HOUSTON

INDEX

	Page
Index of Authorities	1
Statement of the Case	1
Arguments	4
Conclusion	7
Certificate of Service	8

INDEX OF AUTHORITIES

Chapman & Dewey Land Co. v. *Bigelow*, 206 U.S. 41, 27 S.Ct. 679 (1907)	5
Ex Parte Wall, 107 U.S. 265, 2 S.Ct. 569 (1883)	6
Fisher v. *Carrico*, 122 U.S. 522, 7 S.Ct. 1227 (1887)	4
Forrest v. *Hanson*, 424 S.W.2d 899 (Tex. Sup. 1968)	4
Galloway v. *United States*, 319 U.S. 372, 63 S.Ct. 1077 (1943)	7
Humble Oil & Refining Co. v. *Sun Oil Co.*, 190 F.2d 191 (5th Cir. 1951), *rehearing denied*, 191 F.2d 705, *cert. denied*, 342 U.S. 920, 72 S.Ct. 367 (1952)	7
Parker v. *Leman*, 10 Tex. 116 (1853)	7
Quarles v. *State*, 398 S.W.2d 935 (Tex. Crim. App. 1966)	3
Quarles v. *State*, 385 S.W.2d 395 (Tex. Crim. App. 1964), *cert. denied*, 382 U.S. 829, 86 S.Ct. 65 (1965)	3
Quarles v. *State Bar of Texas*, 316 S.W.2d 797 (Tex. Civ. App.—Houston 1958, no writ), *cert. denied*, 368 U.S. 986, 82 S.Ct. 601 (1962)	3
Smith v. *Doak*, 3 Tex. 215 (1848)	7
State Board of Morticians v. *Cortez*, 308 S.W.2d 12 (Tex. Sup. 1957)	4
Stratton v. *Stratton*, 239 U.S. 55, 36 S.Ct. 26 (1915)	4
Sylvester v. *State of Washington*, 215 U.S. 80, 30 S.Ct. 25 (1909)	5
United States v. *Meyer*, 462 F.2d 827 (D.C. Cir. 1972)	5
Welch v. *Tennessee Valley Authority*, 108 F.2d 95 (6th Cir. 1939), *cert. denied*, 309 U.S. 688, 60 S.Ct. 889 (1940)	6
Wooten v. *Dallas Hunting & Fishing Club*, 427 S.W.2d 344 (Tex. Civ. App.—Dallas 1968, no writ)	7

Constitution and Statutes

	Page
28 U.S.C. § 2101	3, 4
28 U.S.C. § 2104	3, 4
28 U.S.C. § 1257	3, 4, 5
United States Constitution, Article III, Section 2	3
Fifth Amendment to the United States Constitution	6
Fourteenth Amendment to the United States Constitution	3
Tex. R. Civ. P. 386	2
Tex. R. Civ. P. 469(c)	4
Tex. R. Civ. P. 414	2
Tex. R. Civ. P. 415	3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-1210

JAMES H. QUARLES, ET AL,

Appellants,

v.

J. C. GOODSON, ET AL,

Appellees.

ON APPEAL FROM THE
COURT OF CIVIL APPEALS OF TEXAS
FOURTEENTH SUPREME JUDICIAL DISTRICT

MOTION OF APPELLEES J. C. GOODSON AND WIFE, FANNIE MAE GOODSON, TO DISMISS OR AFFIRM

Appellees move the Court to dismiss the appeal herein, or in the alternative, to affirm the judgment of the Court of Civil Appeals because the Court does not have jurisdiction over the appeal of this case, and because the questions on which the decision of the Court of Civil Appeals depends are so unsubstantial as not to need further argument.

STATEMENT OF THE CASE

This suit was brought by J. C. Goodson and wife, Fannie Mae Goodson, against James H. Quarles, individually and

as trustee of the Estate of James H. Quarles, and against E. A. Hyland, individually and as trustee, to remove a cloud on the title to certain real property owned by Mr. and Mrs. Goodson. Quarles cross-acted against Mr. and Mrs. Goodson and filed actions against American Title Company, Mrs. E. A. Biggers, and George St. Clair. The case proceeded to trial on October 14, 1974, and after all parties had rested, all parties moved for instructed verdicts. After considering the evidence, the motions, and the arguments of counsel, the presiding Judge of the 152nd Judicial District Court of Harris County, Texas, withdrew the case from the jury and instructed a verdict awarding certain affirmative relief to Mr. and Mrs. Goodson and to American Title Company. All relief prayed for by Quarles and Hyland was denied by the trial court. On November 12, 1974, a final judgment was entered by the trial court.[1] Appellants' motion for new trial was overruled on January 6, 1975.

Appellants filed the transcript with the Court of Civil Appeals for the Fourteenth Supreme Judicial District of Texas on February 21, 1975, but failed to file the statement of facts within the time required by Rule 386 of the Texas Rules of Civil Procedure even though they received two extensions of time to file the statement of facts from the Court of Civil Appeals. Appellants also failed to file a brief with the Court of Civil Appeals within the time required by Rule 414 of the Texas Rules of Civil Procedure. The Court of Civil Appeals sustained the motion of Mr. and Mrs. Goodson to affirm the judgment of the trial court pursuant to Rule 415 of the Texas Rules of Civil Procedure. Quarles's motion for rehearing in the Court

[1] A copy of the judgment of the trial court is attached to Quarles' Appeal and Application for Writ of Certiorari as Appendix F.

of Civil Appeals was overruled. No motion for rehearing was filed by Hyland.

Appellants filed an appeal and petition for writ of error with the Supreme Court of Texas on August 21, 1975. On October 1, 1975, the Supreme Court of Texas refused the application for writ of error holding that there had been no reversible error by the Court of Civil Appeals. The Supreme Court of Texas overruled appellants' motion for rehearing on October 29, 1975.

In their appeal to this Court, appellants contend that they were denied a fair and impartial trial, were denied due process, and were denied a jury trial. Appellants assert jurisdiction in this Court under 28 U.S.C. § 2101; 28 U.S.C. § 2104; 28 U.S.C. § 1257; Article III, Section 2 of the United States Constitution, and under the Fifth and Fourteenth Amendments to the Constitution. Although Quarles is not licensed to practice law in the State of Texas, he purports to appeal on his own behalf and on behalf of Hyland and the surety on their appeal bond in Court of Civil Appeals, Lawyers Surety Corporation. *See Quarles* v. *State,* 398 S.W.2d 935 (Tex. Crim. App. 1966); *Quarles* v. *State,* 385 S.W.2d 395 (Tex. Crim. App. 1964), *cert. denied,* 382 U.S. 829, 86 S.Ct. 65 (1965); *Quarles* v. *State Bar of Texas,* 316 S.W.2d 797 (Tex. Civ. App. — Houston 1958, no writ), *cert. denied,* 368 U.S. 986, 82 S.Ct. 601 (1962).

Appellees except to all statements in appellants' Appeal and Application for Writ of Certiorari insofar as they vary from the above Statement of the Case and from the record of the case in the courts below.

ARGUMENTS

I.

This Court has No Jurisdiction Over the Purported Appeal by E. A. Hyland Because he is Not Appealing from the Final Judgment or Decree of the Highest Court of the State of Texas

28 U.S.C. § 1257 only allows appeals to this Court of "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had,...." The highest state court in Texas that may entertain an appeal is the Supreme Court of Texas. In the instant case Hyland failed to file a motion for rehearing in the Court of Civil Appeals of Texas. The filing of such motion is a jurisdictional prerequisite for review by the Supreme Court of Texas. *Forrest* v. *Hanson,* 424 S.W.2nd 899 (Tex. Sup. 1968); *State Board of Morticians* v. *Cortez,* 368 S.W.2d 12 (Tex. Sup. 1957); Tex.R.Civ.P. 469(c). Since the Supreme Court of Texas has not reviewed the judgment of the Court of Civil Appeals insofar as it disposes of the claims of Hyland, this Court has no jurisdiction over Hyland's purported appeal. *Stratton* v. *Stratton,* 239 U.S. 55, 36 S.Ct. 26 (1915); *Fisher* v. *Carrico,* 122 U.S. 522, 7 S.Ct. 1227 (1887).

II.

Quarles has Failed to Assert a Basis for Appeal to This Court

In his jurisdictional statement Quarles asserts jurisdiction under 28 U.S.C. § 2101, 28 U.S.C. 2104 and 28 U.S.C. § 1257. The first two provisions relate to the time and manner of an appeal and do not confer jurisdiction on this Court. 28 U.S.C. § 1257 expressly permits appeal in only

two situations — where the decision below has invalidated a treaty or statute of the United States, or where it is contended that the statute of a state is repugnant to the Constitution. Quarles's jurisdictional statement alleges neither of these situations.[2]

III.

The Case Presents No Substantial Question For Review by This Court

The judgment of the Texas trial court was based upon the factual finding by that court that appellants had wrongfully clouded the title of land owned by Mr. and Mrs. Goodson, and that Mr. and Mrs. Goodson were entitled to have this cloud removed by judicial decree. It has long been established that a question of fact decided by a state trial court is a local question and not a proper matter for review by this Court. *Sylvester* v. *State of Washington,* 215 U.S. 80, 30 S.Ct. 25 (1909); *Chapman & Dewey Land Co.* v. *Bigelow,* 206 U.S. 41, 27 S.Ct. 679 (1907).

Appellants' due process allegations focus upon the alleged denial of a fair and impartial trial and the alleged denial of a jury trial. The only decision cited in support of appellants' due process arguments, *United States* v. *Meyer,* 462 F.2d 827 (D.C. Cir. 1972), stands for the proposition, inter alia, that due process of law requires that an accused person be afforded an adjudication before an impartial judge. Contrary to appellants' bald assertions, there was no im-

---

[2] Because of confusion in terminology used by Quarles in his "Appeal and Application for Writ of Certiorari" and other instruments he has filed with the Court, appellees are unsure whether Quarles may later contend that he is seeking review by writ of certiorari. Should this contention be made, appellees would respectfully show that Quarles has asserted no basis for review by this Court of the non-federal grounds upon which the judgments below are based and that certiorari should be denied.

partiality or unfairness during the trial of this case. The fact that the trial judge, after reviewing the evidence, ruled against appellants is not evidence of impartiality or unfairness. Appellants complain of their inability to show such prejudice because of their denial of a statement of facts. Appellees would respectfully show that a statement of facts was prepared at the request of appellants, but appellants refused to pay the court reporter for the statement of facts.[3] Appellants' own lack of diligence in securing and filing a statement of facts certainly does not constitute a denial of due process reviewable by this Court.

As a further basis for seeking review by this Court, appellants assert that they were denied a jury trial. This Court has held that the right to a jury trial in a civil case is not guaranteed by the due process clause of the Fifth Amendment or by any other provision of the Constitution. *Ex Parte Wall,* 107 U.S. 265, 288, 2 S.Ct. 569, 589 (1883); *accord, Welch* v. *Tennessee Valley Authority,* 108 F.2d 95 (6th Cir. 1939), *cert. denied,* 309 U.S. 688, 60 S.Ct. 889 (1940). In the instant case a jury was impaneled and all of the evidence was presented to the jury. At the conclusion of the evidence, however, the trial court concluded that the right of Mr. and Mrs. Goodson to have the cloud on their title removed had been established as a matter of law. In accordance with Texas practice, the trial court thus directed a verdict for appellees. The constitutionality of a directed verdict, or a judgment based upon a trial without a jury, has long been upheld by Texas courts. *Parker* v. *Leman,* 10 Tex. 116 (1853); *Wooten* v. *Dallas Hunting &*

[3] For a more detailed explanation of the facts surrounding Quarles's failure to file a statement of facts appellees would direct the Court's attention to their opposition to appellants' third application for extension of time to file statement of facts and application for writ of mandamus, contained among the records certified by the clerk of the Court of Civil Appeals.

Fishing Club, 427 S.W. 2d 344 (Tex. Civ. App. — Dallas 1968, no writ). Furthermore, this Court has upheld the constitutionality of federal rules allowing directed verdicts. *Galloway* v. *United States,* 319 U.S. 372, 63 S.Ct. 1077 (1943).

Appellees would further show that the judgment of the trial court removing the cloud on their title was equitable in nature.[4] An action brought by one in possession of land to quit his title to land is an equitable action and affords no right to a jury trial. *Humble Oil & Refining Co.* v. *Sun Oil Co.,* 190 F.2d 191 (5th Cir. 1951), *rehearing denied,* 191 F.2d 705, *cert. denied,* 342 U.S. 920, 72 S.Ct. 367 (1952).

CONCLUSION

Appellees respectfully submit that the questions upon which appellants predicate their appeal do not authorize jurisdiction by this Court, and, alternatively, are so unsubstantial as not to need further argument. Appellees respectfully move the Court to dismiss this appeal, or, in the alternative, to affirm the judgment entered in this cause by the Court of Civil Appeals for the Fourteenth Supreme Judicial District of Texas.

Respectfully submitted,

SIMEON TIMOTHY LAKE III

.....

Counsel for Appellees
J. C. GOODSON AND
FANNIE MAE GOODSON

Of Counsel:
FULBRIGHT & JAWORSKI
Bank of the Southwest Bldg.
Houston, Texas 77002
224-7070

[4] Texas courts have both equity and law jurisdiction and all remedies and rights are administered together in one proceeding. *Smith* v. *Doak,* 3 Tex. 215 (1848).

CERTIFICATE OF SERVICE

The undersigned, a member of the Bar of this Court, hereby certifies that three (3) copies of the foregoing Motion to Dismiss or Affirm have this the ..... day of March, 1976, been served upon James H. Quarles, and upon each counsel of record, in accordance with Rule 33 of this Court, by depositing the same in the United States mail with first class postage prepaid, addressed to such persons at their post office addresses.

.....

SIMEON TIMOTHY LAKE III

Supreme Court, U. S.
FILED
MAY 12 1976
MICHAEL RODAK, JR., CLERK

NO. 75-1210

IN THE

Supreme Court of the United States

JAMES H. QUARLES, Individually and as Trustee for the Estate of James H. Quarles, E. A. HYLAND, Individually and as Trustee, and LAWYERS SURETY CORPORATION, *Appellants*

v.

J. C. GOODSON, also sometimes known as JACK C. GOODSON and wife, FANNIE MAE GOODSON, MRS. E. A. BIGGERS, D/B/A E. A. BIGGERS, REAL ESTATE, GEORGE N. ST. CLAIR, and AMERICAN TITLE COMPANY, *Appellees*

PETITION FOR REHEARING DISMISSING APPEAL AND DENYING CERTIORARI

JAMES H. QUARLES
Post Office Box 52009
Houston, Texas 77052
Attorney for Appellants

Alpha Law Brief Co., One Main Plaza, No. 1 Main St., Houston, Texas 77002

NO. 75-1210

IN THE

Supreme Court of the United States

JAMES H. QUARLES, Individually and as Trustee for the Estate of James H. Quarles, E. A. HYLAND, Individually and as Trustee, and LAWYERS SURETY CORPORATION, *Appellants*

v.

J. C. GOODSON, also sometimes known as JACK C. GOODSON and wife, FANNIE MAE GOODSON, MRS. E. A. BIGGERS, D/B/A E. A. BIGGERS, REAL ESTATE, GEORGE N. ST. CLAIR, and AMERICAN TITLE COMPANY, *Appellees*

PETITION FOR REHEARING DISMISSING APPEAL AND DENYING CERTIORARI

Petitioners respectfully request that this Court grant rehearing of its Order dated April 19, 1976, which dismissed his appeal and denied certiorari, and that the Court now grant a hearing on their appeal or in the alternative grant certiorari.

Petitioners now contend that appellees' brief was prejudiced, inflammatory and biased and was intended to influence this court with previous litigation with the State

of Texas and appealed to this court by petitioner Quarles, and set out in appellees brief, said litigation having no bearing upon this case whatsoever and therefore denies the petitioners due process by this court.

The appeal previously filed herein was brought under statutory provisions 28 U.S.C.A. 2101, 28 U.S.C.A. 2104, 28 U.S.C.A. 1257, and Article III, Sec. II of the United States Constitution, and Amendments V, VII and XIV and was supported by case decision in *United States of America v. Bernard E. Myer,* 462 F.2d 827, 346 F. Supp. 973.

Petitioners represent unto the Court that the Order entered in this case is in direct conflict with the Court's decision in Case No. 71-862, *United Air Lines, Inc., Appellants v. George E. Mahin, et al.,* 93 S.Ct. 1186, in which the Court vacated and remanded the Order of the Illinois Supreme Court, and in so doing this Court said:

> Determination that certain construction of State Statutes was invalid under Federal Constitution created a Federal question cognizable by the United States Supreme Court and possibility that State Court might have reached same conclusion if it had decided question purely as a matter of State law does not create an adequate and independent State ground that relieves Supreme Court of the necessity of considering Federal question.

The appeal filed was one entitled to decision by the Court as one having been ruled upon by the Texas Supreme Court and therefore entitled to review by this Court under 28 U.S.C.A. 1257 as well as other authority set out herein. The appeal presented the questions as to whether:

A. They were denied a fair and impartial trial.

B. They were denied Due Process.

C. They were denied a Jury Trial.

Since there now exist a clear and express conflict of decisions among the courts on an important question of Federal law affecting many people in different parts of the country, compelling reasons are evident why the questions presented should be reviewed and definitely determined by this Court.

CONCLUSION

For the reasons set forth in this petition for rehearing, as well as in the appeal and application for certiorari should be granted.

Respectfully submitted,

JAMES H. QUARLES
Post Office Box 52009
Houston, Texas 77052
Attorney for Appellants

CERTIFICATE

Pursuant to Rule 58, I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and is restricted to the grounds specified in paragraph 2 of Rule 58.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed by United States mail, postage prepaid, addressed to the following individuals at the address following each of their respective names.

Mr. T. Turner Pope
Kamp, Laswell & Pope
2935 Entex Building
Houston, Texas 77002

Mr. John T. McKeller
2626 Westheimer
Houston, Texas 77006

Mr. Sim Lake
Fulbright and Jaworski
Bank of the Southwest Bldg.
Houston, Texas 77002

Mr. David N. Gray
1453 Esperson Bldg.
Houston, Texas 77002

on this _____ day of May, 1976.

JAMES H. QUARLES, Trustee
Attorney for Appellants